

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUSSELL TRUNZO,

Petitioner,

No. C 05-00734 JSW

v.

JILL BROWN, et al.

**ORDER DENYING MOTION TO
STAY PENDING APPEAL**

Respondents.

On March 13, 2008, the Court granted the petition for a writ of habeas corpus, filed by Russell Trunzo ("Trunzo"), and ordered Respondents to set a release date for Trunzo within sixty days of the Court's Order. On March 18, 2008 Respondents¹, filed a motion to stay, in which she advised the Court that she intended to appeal the Court's decision. On March 21, 2008, Respondent filed a notice of appeal. The motion to stay is now ripe for decision, and the Court finds the matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b).

In general, the factors the Court must consider in deciding this motion are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Brraunskill*, 481 U.S. 770, 776 (1987).

¹ The Court has captioned this matter as it was original filed. As noted in the Amended Motion to Stay, Robert Ayers is the current warden of San Quentin.

1 The Court has considered Respondents' arguments on likelihood of success on the
2 merits, but finds them unpersuasive for the reasons set forth in the Order granting the Petition.
3 With respect to Respondents' argument that the Court improperly reweighed evidence, the Court
4 again notes that because there was no reasoned decision, it was required to conduct an
5 independent review of the record and did so. (*See* Order Granting Petition at 11:8-10.)

6 The Court also finds that, given the circumstances of this case, the remaining factors
7 also weigh against a stay. Although Respondents contend they would be irreparably injured
8 because the Board is required to determine suitability before setting a release date, the Court
9 concluded that there was no basis in the record to support a finding that Trunzo is unsuitable for
10 parole. Moreover, although the Board contends that the proper remedy would have been to
11 order the Board to conduct a hearing that comported with due process, the Status Report
12 submitted by Trunzo suggests that would have been a futile effort. (*See* Docket No. 22.)
13 Further, although Trunzo indeed may be serving a sentence of 15 years to life, it is a sentence
14 that provides for the possibility of parole. The Court concludes that Trunzo would be injured if
15 a stay was entered. Finally, as noted in the Order granting the Petition, the Court concluded that
16 the Board's decision that Trunzo presented a present danger to society was not supported by
17 some evidence. Thus, this factor also weighs against granting a stay.

18 Accordingly, the Court DENIES the motion for a stay. Absent a stay from the Ninth
19 Circuit, Respondents *shall set a release date* in accordance with the Order granting the Petition
20 by no later than May 13, 2008.

21 **IT IS SO ORDERED.**

22 Dated: April 2, 2008

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24 JEFFREY S. WHITE
25 UNITED STATES DISTRICT JUDGE
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